

IN THE MATTER OF THE WESTWOOD
CHEMICAL CORPORATION
SUPERFUND SITE

ROCCO GIOVANNIELLO,
Settling Party

Under the authority of Section 122(h)(1)
of the Comprehensive Environmental Response,
Compensation, and Liability Act of 1980,
42 U.S.C. § 9622(h)(1).

: SETTLEMENT AGREEMENT
:
: U.S. EPA REGION 2
:
: Index Number
: CERCLA-02-2007-2015
:
:
:
:
:

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D, and further delegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by EPA Region 2 Order dated November 23, 2004. This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States, which authority, in the circumstances of this settlement, has been delegated within the Department of Justice ("DOJ"), by DOJ Directive 2004-01, to the Deputy Chief of the Environmental Enforcement Section, Environment and Natural Resources Division.

2. This Settlement Agreement is made and entered into by EPA and Rocco Giovanniello ("Settling Party"). Settling Party consents to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Westwood Chemical Corporation Superfund site ("Site") located in the Town of Wallkill, Orange County, New York. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).



4. In response to the release or threatened release of hazardous substances at or from the Site, EPA conducted response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may conduct additional response actions in the future. Between March 2, 2005 and March 1, 2006, EPA Region 2 incurred approximately \$3 million of response costs in performance of a time-critical removal action at the facility. Westwood Chemical Corporation owned and operated the facility to manufacture chemicals used in antiperspirants and substances used by municipal water suppliers until October 2004, when it shut down its operations, abandoned the facility and subsequently became bankrupt, leaving behind at the Site production chemicals, finished product, and waste materials, including hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). EPA secured and stabilized the Site; addressed numerous spills at the Site; sampled chemicals and other materials and staged and disposed of hazardous wastes and other wastes that had been abandoned in wastewater, laboratory chemicals, materials in production and raw chemicals, much of which had been stored in drums, plastic "totes" and other containers. The removal action also included decontamination of portions of the production building and certain production equipment, and the dismantling of contaminated polyethylene and fiberglass tanks, polyvinyl chloride process lines and the disposal of associated debris; and the investigation and, where appropriate, remediation of areas of the Site with visible or apparent contamination.

5. In performing response actions at the Site, EPA incurred response costs and may incur additional response costs in the future.

6. EPA alleges that Settling Party is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA reviewed the Financial Information submitted by Settling Party to determine whether Settling Party is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, EPA determined that Settling Party has limited financial ability to pay for response costs incurred and to be incurred at the Site.

8. EPA and Settling Party recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Party in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Party does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Party and his heirs, successors and assigns. Any change in legal status of Settling Party, including but not

limited to any transfer of assets or real or personal property, shall in no way alter Settling Party's responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Party to make a cash payment to address his alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the United States.

e. "Financial Information" shall mean those financial documents identified in Appendix A.

f. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Party.

I. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settling Party" shall mean Rocco Giovanniello.

k. "Site" shall mean the Westwood Chemical Corporation Superfund site, an approximately 9-acre facility previously owned by Westwood Chemical Corporation and located at 46 Tower Drive, City of Middletown, Town of Wallkill, Orange County, New York.

l. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

VI. PAYMENT OF RESPONSE COSTS

12 Settling Party shall pay to the EPA Hazardous Substance Superfund the principal sum of \$25,000, plus an additional sum for Interest as explained below. Payment shall be made in two installments. The first payment of \$15,000 shall be due within 30 days of the effective date of this Settlement Agreement. A second payment of \$10,000 shall be due on the first anniversary of the effective date of this Settlement Agreement, which payment shall include the principal amount of \$10,000, plus an additional sum for accrued Interest on said \$10,000 calculated from the effective date of this Settlement Agreement as defined in Paragraph 32 until the date of payment. Settling Party may accelerate the second payment.

Settling Party shall make all payments required by this Settlement Agreement via electronic funds transfer ("EFT"). Settling Party shall remit payment to EPA via EFT directed to the Federal Reserve Bank of New York, providing the following information to its bank:

- i. EFT to be directed to: **Federal Reserve Bank of New York**
- ii. ABA Number: **021030004**
- iii. Federal Reserve Bank of New York account number: **68010727**
- iv. SWIFT address: **FRNYUS33**
- v. Address: **Federal Reserve Bank of New York, 33 Liberty Street, New York NY 10045**
- vi. Field Tag 4200 of the Fedwire message to read: **D 68010727 Environmental Protection Agency**
- vii. Amount of payment: **Specify the Amount of the Payment**
- viii. Settling Party's Name: **Rocco Giovanniello**
- ix. Index Number: **CERCLA-02-2007-2015**

x. Site/spill identifier: 02WN

To ensure that Settling Party's payments are properly recorded, Settling Party shall send a letter to EPA within one week of each EFT which references the date of the EFT, the payment amount, the name of the Site, the above-referred index number, and Settling Party's name and address. Such letter shall be sent to the persons identified in Section XIII (Notices and Submissions).

13. The total amount to be paid by Settling Party pursuant to Paragraph 12 shall be deposited by EPA in the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

14. If Settling Party fails to make any payment required by Paragraph 12 by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

15. Stipulated Penalty.

a. If any amounts due under Paragraph 12 are not paid by the required date, Settling Party shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 14, \$250 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by EFT in the manner provided in Paragraph 12.

c. At the time of each payment, Settling Party shall send notice to EPA, in the same manner as the notice required by Paragraph 12 of this Settlement Agreement, that such payment has been made.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Party of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

16. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Party's failure to comply with the requirements of this Settlement Agreement, if Settling Party fails or refuses to comply with any term or condition of this Settlement Agreement, it shall be subject to

enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Party shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

17. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Party's payment of stipulated penalties shall not excuse Settling Party from payment as required by Paragraph 12 or from performance of any other requirements of this Settlement Agreement.

VIII. COVENANT NOT TO SUE BY EPA

18. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Party pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Section VI, Paragraph 12 (Payment of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Party of its obligations under this Settlement Agreement including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Settlement Agreement). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Party. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Party shall forfeit all payments made pursuant to this Settlement Agreement and the covenant not to sue shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose EPA's right to pursue any other causes of action arising from Settling Party's false or materially inaccurate information. This covenant not to sue extends only to Settling Party and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

19. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Party with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 18. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Party with respect to:

- a. liability for failure of Settling Party to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources,

and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Party's ownership or operation of the Site, or upon Settling Party's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Party; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

20. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Party, or the financial certification made by Settling Party in Paragraph 28(b), is false or, in a material respect, inaccurate.

21. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANT NOT TO SUE BY SETTTLING PARTY

22. Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 24 (Waiver of Claims) and Paragraph 27 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph

19(c) - (e), but only to the extent that Settling Party's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

23. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24. Settling Party agrees not to assert any claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Except as provided in Paragraph 24, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

26. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that the Settling Party is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred and to be incurred, at or in connection with the Site, by the United States or by any other person. The "matters addressed" in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against Settling Party coming within the scope of such reservations. In the event that the Settling Party's waiver of claims becomes inapplicable in accordance with Paragraph 24, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which the Settling Party has resolved his liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for "matters addressed" as defined above.

27. In any subsequent administrative or judicial proceeding initiated by the United States

for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. CERTIFICATION

28. Settling Party hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, he has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to his potential liability regarding the Site since the earliest of notification of potential liability by the United States or Notice of Violations related to the Site by New York State or the filing of a suit against him regarding the Site, and that he has fully complied with any and all EPA requests for documents or information regarding the Site and Settling Party's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e);

b. submitted to EPA or to the United States Department of Justice ("DOJ") Financial Information that fairly, accurately, and materially sets forth his financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA or DOJ and the time Settling Party executes this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XIII. NOTICES AND SUBMISSIONS

29. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless a Party gives notice, in writing, of a change to the other Party. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Party.

As to EPA:

Dilshad Perera
On-Scene Coordinator
Emergency and Remedial Response Division
U.S. EPA, Region 2
2890 Woodbridge Avenue
Edison, NJ 08837

and

Michael A. Mintzer
Office of Regional Counsel
U.S. EPA, Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

And, for notices given pursuant to Paragraph 12 or Paragraph 15.c. of this Settlement Agreement, the following additional addressees:

Comptroller, Financial Management Branch
U.S. EPA, Region II
290 Broadway, 29th Floor
New York, NY 10007-1866

and

U.S. Environmental Protection Agency
26 W. Martin Luther King Drive
Cincinnati Finance Center, MS: NWD
Cincinnati, Ohio 45268

and by email to:

acctsreceivable.cinwd@epa.gov

As to Settling Party:

Rocco Giovanniello
9 Painted Apron Terrace
Port Jervis, NY 12771

Christopher A. Amato, Esq.
Dreyer Boyajian, LLP
75 Columbia Street
Albany, NY 12210

XIV. INTEGRATION/APPENDICES

30. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding between the Parties with respect to the settlement

embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is a list of the financial documents submitted by Settling Party to the United States

XV. PUBLIC COMMENT

31. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVI. EFFECTIVE DATE

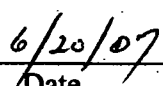
32. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 31 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

SETTLING PARTY




Rocco Giovanniello



Date


Settlement Agreement in the Matter of the Westwood Chemical Corporation Superfund Site.
U.S. EPA Region 2, Rocco Giovanniello, Settling Party. Index Number CERCLA-02-2007-2015

U.S. ENVIRONMENTAL PROTECTION AGENCY

By:  7/11/07
George Pavlou, Director Date
Emergency and Remedial Response Division
Region 2, U.S. Environmental Protection Agency
New York, NY

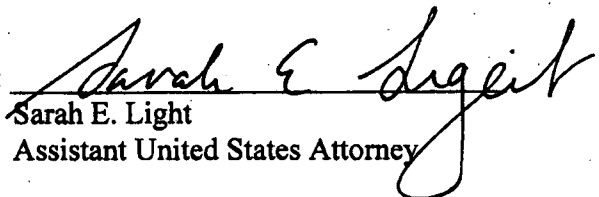
Settlement Agreement in the Matter of the Westwood Chemical Corporation Superfund Site.
U.S. EPA Region 2, Rocco Giovannello, Settling Party. Index Number CERCLA-02-2007-2015

U.S. DEPARTMENT OF JUSTICE


Ellen Mahan, Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

8/2/07
Date

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

By: 
Sarah E. Light
Assistant United States Attorney

8/6/07
Date

**APPENDIX A
TO
SETTLEMENT AGREEMENT
IN THE MATTER OF THE WESTWOOD CHEMICAL CORPORATION SUPERFUND SITE:
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 2
ROCCO GIOVANNIELLO, SETTLING PARTY
INDEX NUMBER CERCLA-02-2007-2015**

FINANCIAL DOCUMENTS SUBMITTED BY SETTLING PARTY

1. Letter dated November 29, 2006 from Christopher Amato, Dreyer Boyajian LLP addressed to Assistant United States Attorney Sarah E. Light and New York State Assistant Attorney General Maureen Leary, and the items included therewith as identified as Exhibits A through Exhibits G, subject to supplement (by letter dated December 18, 2006 ((see item 2, below)) of the tax returns listed at Exhibit C to such letter.
2. Letter dated December 18, 2006 from Christopher Amato, Dreyer Boyajian LLP addressed to Assistant United States Attorney Sarah E. Light and New York State Assistant Attorney General Maureen Leary, and the tax returns for Rocco and Ann Marie Giovanniello for 2003 and 2005 included therewith.
3. E-mail dated April 11, 2006 from Christopher Amato, Dreyer Boyajian LLP to New York State Assistant Attorney General Maureen Leary with a copy to Assistant United States Attorney Sarah E. Light, and the tax return for Rocco and Ann Marie Giovanniello for 2006 attached thereto.